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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 2nd March 1953

S.R.O. 400.—WHEREAS a vacancy has occurred in the seats allotted to the State of Punjab in the Council of States by reason of the death of Shri Mukand Lal Puri;

NOW, THEREFORE, in exercise of the powers conferred by section 147 of the Representation of the People Act, 1951 (XLIII of 1951), the Election Commission hereby calls upon the elected members of the Legislative Assembly of the State of Punjab to elect, in accordance with the provisions of the said Act and of the Rules and Orders made thereunder, a person to fill the vacancy so caused before the 31st March, 1953.

[No. 100/2/1/53(1).]

S.R.O. 401.—In exercise of the powers conferred by sub-section (2) of section 39 of the Representation of the People Act, 1951 (XLIII of 1951), the Election Commission hereby appoints for the bye-election to the Council of States to be held in pursuance of its notification No. 100/2/1/53(1), dated the 2nd March, 1953,—

- (a) the 9th March, 1953, as the last date for making nominations;
- (b) the 11th March, 1953, as the date for the scrutiny of nominations;
- (c) the 14th March, 1953, as the last date for the withdrawal of candidatures; and
- (d) the 26th March, 1953, as the date on which a poll shall, if necessary, be taken.

[No. 100/2/1/53(2).]

S.R.O. 402.—In exercise of the powers conferred by section 21 of the Representation of the People Act, 1951 (XLIII of 1951), the Election Commission, in consultation with the Government of Punjab, hereby designates the Secretary, State Legislature, to be the Returning Officer for the bye-election to the Council of States to be held in pursuance of the Election Commission's notification No. 100/2/1/53(1), dated the 2nd March, 1953.

[No. 102/1/53(1).]

S.R.O. 403.—In exercise of the powers conferred by sub-section (1) of section 22 of the Representation of the People Act, 1951 (XLIII of 1951), the Election Commission hereby appoints the Assistant Secretary, State Legislature, to assist the Returning Officer for the bye-election to the Council of States to be held in pursuance of the Election Commission's notification No. 100/2/1/53(1), dated the 2nd March, 1953.

[No. 102/1/53(2).]

S.R.O. 404.—WHEREAS the election of Shri Ladhu Ram Chodhri, resident of village Gordhanpura, Tehsil Torawati (Neeroka Thana) District Sikar, Jaipur Division, as a member of the Legislative Assembly of the State of Rajasthan from the Neem-ka-Thana 'A' constituency, has been called in question by an election petition (No. 228 of 1952 before the Election Commission), duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Lakshmi Chand, S/O Shri Gopi Chand, Chowk Govind Das Swami, Gali Hanumanji, Chowkri Purani Basti (Brahmpuri), Jaipur City;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said election petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE ELECTION TRIBUNAL, JAIPUR

ELECTION PETITION NO. 8 OF 1952

Pt. Lakshmi Chand—*Petitioner.*

Versus

Shri Ladhu Ram Choduri & others—*Respondents.*

PRESENT:

Mr. Justice K. K. Sharma—*Chairman*

Mr. A. N. Kaul—*Member.*

Mr. P. L. Shome—*Member.*

FOR THE PETITIONER.

Mr. Sharma Ramesh Chandra.

FOR RESPONDENT NO. 1.

Mr. B. L. Lohadia.

ORDER

Dated the 21st February 1952

The petitioner, Pt. Lakshmi Chand, stood as a candidate, during the last General Elections in January, 1952, to the Rajasthan Legislative Assembly from the Neem-ka-Thana A Constituency. He filed a nomination paper, which, after scrutiny, was rejected on the 23rd of November, 1951. The ground on which the nomination paper was rejected was that "the four crosses put between the words 'ने, and

'नियुक्त किया है' signify that the candidate has not appointed anybody as his Election Agent". According to the Returning Officer, the entire sentence could not be read in parts, but it had to be read in full.

The petitioner says that the nomination paper could not be rejected on this ground, because he had appointed himself as his own Agent, and did not strike the words "स्वयं को" (myself) and "अपना" (as my) from the declaration in the nomination paper, and had put cross marks only in those places which were meant for the description of the Agent in case he was any other than the candidate himself. It is alleged that the rejection of the nomination paper on the ground on which it was rejected by the Returning Officer was improper, and it has materially affected the result of the election.

After the receipt of the petition before this Tribunal, summonses were issued to all the four respondents, that is, Shri Ladhu Ram Chodhri, Shri Bishambhar Dayal, Shri Motiram Patel, and Shri Dalel. Out of these four, Shri Ladhu Ram Chodhri is the successful candidate at the election. Shri Bishambhar Dayal, respondent No. 2, did not put in appearance before this Tribunal, but was duly served. Shri Motiram, respondent No. 3, and Shri Dalel, respondent No. 4, put in their written statements, but thereafter absented themselves. Shri Ladhu Ram Chodhri, respondent No. 1, alone has contested the petition, and against all other respondents the case proceeded *ex parte*.

Shri Motiram and Shri Dalel support the petitioner, and say that the nomination paper of the petitioner was improperly rejected, and the rejection materially affected the result of the election.

The contesting respondent, Shri Ladhu Ram, says in his written statement that the ground on which the nomination paper of the petitioner was rejected was valid, and the rejection was consequently proper. He also says that the result of the election has not been materially affected by the rejection of the petitioner's nomination paper, and that the petition was not properly presented as required under section 81 of the Representation of the People Act, 1951.

On a perusal of the petition and the written statements, and after recording the statement of the counsel for respondent No. 1 under Order X, Rule 1, of the Code of Civil Procedure, the following issues were framed on the 6th of January, 1953:—

1. Whether the nomination paper of the petitioner was improperly rejected on the ground that the putting of cross-marks in the blank spaces in the declaration of appointment of election agent in the nomination paper signified that no election agent had been appointed by the petitioner?
2. Whether the result of the election has been materially affected by the rejection of the petitioner's nomination paper?
3. Whether Mr. P. N. Krishnamani, Assistant Secretary, Election Commission, India, was not authorised to receive the election petition? If so, what is its effect upon the election petition?

We shall discuss these issues separately, and in so doing we shall give our finding on issue No. 3 first.

Issue No. 3.—This issue was framed because it was objected by the contesting respondent that the petition was not filed in accordance with section 81 of the Representation of the People Act, 1951 (hereinafter to be referred to as the Act) inasmuch as it was presented to Mr. P. N. Krishnamani, who was not authorised in this behalf by the Election Commission. Mr. P. N. Krishnamani was, therefore, cited as a witness by the contesting respondent; but later on it was found that he had been authorised to receive election petitions by the Election Commission by the Notification No. 18/52-Elec.III, dated the 16th February, 1952, published at page 46 of the Gazette of India, Part I—Section 1, dated the 23rd February, 1952. A letter in that behalf was also received from Mr. P. N. Krishnamani enclosing a copy of the said Gazette notification. On this the contesting respondent withdrew his objection giving rise to this issue. The issue is, therefore, decided against the contesting respondent and in favour of the petitioner, and it is held that the election petition was validly presented.

Issue No. 1.—This is the crucial issue in the case. In the nomination paper, Ex. P. 1, there is a declaration form, which, runs thus:

"I hereby declare that I have appointedson of.....of.....
my self
to be my
as my election agent."

This form shows that in case a candidate appoints somebody other than himself as his election agent, he should give the description of such person as required in the form, that is, the name, parentage etc. In case, however, the candidate appoints his own self as his agent, the word "myself", which appears below the line, is quite sufficient, and it is not necessary that his name, parentage etc. should be recorded either after the word "myself" or over the line, or in place of the word "myself". If that were the intention, the word "myself" below the line was altogether superfluous. The words above the line would have been quite sufficient, and in that case the candidate would have been required to give his parentage, residence etc. If only the declaration form were to be looked to, there could be no other possible interpretation thereof. The learned counsel for the contesting respondent, however, argued that at the foot of the nomination form there are certain notes, and after note No. 6, the following words find place:—

"Only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for election in the same constituency, the name of the election agent so appointed, whether such agent is the candidate himself or any other person, shall be specified in each such nomination paper."

From these words it was argued that whether the candidate appoints his own self or some other person as his agent, he should give the name of the election agent.

We have very carefully considered the above words, but to our mind they do not affect the nomination paper in the present case. This direction is given only in the case where more than one nomination paper is delivered by or on behalf of a candidate for election in the same constituency. In the present case, there is only one nomination paper, and, therefore, this direction does not control the present nomination paper. We do not want to decide in this case what would have been the effect of not specifying the name of the petitioner himself in the declaration about the appointment of election agent in the nomination paper, if more than one nomination paper were filed. This question might have to be examined in cases where more than one nomination paper were filed, and the candidate contented himself with retaining the word "myself" only below the line in the declaration form for the appointment of agent, and did not give his name. There are conflicting authorities on this point. Two Tribunals, one of Qulon in the case of *Sri C. K. Ramchandran Nair vs. Sri Ramchandra Das and others* (Election Petition No. 33 of 1952) published in Part I—Section 1 of the Gazette of India, Extraordinary, No. 459B, dated November 11, 1952, at page 2396e, and the other of Saurashtra in the case of *Shri Prabhudas Ramilbhai Mehta vs. Laloobhai Kishordas Maniar* (Election Petition No. 335 of 1952), published in Part II—Section 3 of the Gazette of India, Extraordinary, No. 178, dated 27th December 1952, at page 1063, have held that the footnote is *ultra vires* subsection (3), section 33 of the Act, and has, therefore, no binding effect. They have held that section 33(3) read with the declaration form given in the prescribed nomination form goes to show that in the case of a candidate appointing his ownself as his election agent, the word "myself" under the line would do, and there is no necessity to specify the name. A different view has, however, been taken by the Bhopal Tribunal in the case of *Bejaysingh vs. Narbada Charan Lal and others* (Election Petition No. 133 of 1952) published in the Gazette of India Extraordinary, Part II—Section 3, No. 6, dated 6th January 1953, at page 29. We do not consider it necessary to examine in this case as to which of these two conflicting views is correct, because even in the Bhopal case there were more than one nomination paper, and so the facts of that case are distinguishable from the facts of the present case. Our finding, therefore, is that the nomination paper of the petitioner was improperly rejected.

Issue No. 2.—Under section 100(1) (c) of the Act, the election is to be declared wholly void, if the result of the election has been materially affected by the improper acceptance or rejection of any nomination paper. It has been consistently held under the rules framed by different provinces under the Government of India Act, 1935, that if a nomination paper is improperly rejected, the ordinary presumption is that the result of the election has been materially affected. Even in the cases decided under the present Act by recent Tribunals, the same view has been taken. We are not prepared to say in this case whether this presumption is altogether irrebuttable or it might be rebutted, because we are not called upon to decide this question in the present case, as the learned counsel for the contesting respondent himself has conceded that in case it is held that the nomination paper of the petitioner was improperly rejected, the result of the election can be said to have been materially affected by the rejection in the present case.

The result of the above findings is that the petition is allowed, and the election to which this petition relates is declared to be wholly void. The petitioner shall get his costs from the respondent No. 1, including Rs. 100 as counsel's fee.

(Sd.) KUMAR K. SHARMA, *Chairman.*

(Sd.) ANAND NARAIN KAUL, *Member.*

(Sd.) P. L. SHOME, *Member.*

[No. 19/228/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.